

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

4921 12th AVENUE LLC,

Debtor.

EIN: xx-xxx1630
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4921 12th AVENUE LLC, as DEBTOR

Plaintiff,

-against-

GALSTER FUNDING, LLC,

Defendant.
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ANSWER

Bkcy. No.: 1-18-47256-cec

Chapter 11

Adv. Proc. No. 1-19-01030-cec

Defendant Galster Funding LLC (“Galster”) by its attorneys Butler, Fitzgerald, Fiveson & McCarthy, P.C., responds to the complaint dated March 19, 2019 (“Complaint”) as follows:

1. Paragraph 1 of the Preliminary Statement and paragraphs 2, 3 and 4 of the Jurisdiction & Venue portions of the Complaint do not contain any allegations and therefore do not require a response. To the extent a response is required, Galster denies the allegations in paragraph 1 of the Preliminary Statement.

2. Admits the allegations in paragraphs 1, 2 and 3 of the Factual Background portion of the Complaint, except denies the Debtor continues to be a party in the Galster Fraud Action.

3. Admits the allegations in paragraph 4 of the Factual Background of the Complaint but denies Galster pursued relief in State Court against the Debtor or sought to exert control over Debtor's assets since the commencement date.

4. Denies the allegations in paragraphs 5, 6, 7, 8, 9, 10 and 11 of the Factual Background portion of the Complaint.

5. Responds to the allegations re-stated in paragraph 12 of the Complaint in the same manner Galster previously responded thereto.

6. Admits the allegations in paragraph 13, 14 and 15 of the First Cause of Action, except refers all questions of law to the Court.

7. Denies the allegations in paragraphs 16, 17 and 18 of the First Cause of Action but admits Galster pursued a contempt application against Debtor's principal in State Court.

AFFIRMATIVE DEFENSES

8. The bankruptcy stay is not extended to non-debtor Yehuda Salamon, Debtor's principal. Mr. Salamon has no absolute right of indemnity from the Debtor. A judgment against Mr. Salamon is not effectively a judgment against the Debtor, and the Debtor will not suffer an adverse impact from a judgment against Mr. Salamon. Moreover, Mr. Salamon sought to stay the state court contempt proceedings against him and the state court denied his motion.

9. All claims against the Debtor in state court were severed by the state court and Galster has not pursued any claim against the Debtor in state court since the commencement date.

10. The claims are barred by collateral estoppel.

WHEREFORE, Galster requests the Complaint be dismissed with prejudice, costs, counsel fees, and such other relief to which it may be deemed entitled.

Dated: New York, New York
April 4, 2019

BUTLER, FITZGERALD, FIVESON
& McCARTHY
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